



Fourth Floor
1 South Pinckney Street
P.O. Box 927
Madison, WI 53701-0927

Phone • (608) 257-9521
Fax • (608) 283-1709

Lawrie J. Kobza
Direct Dial Number • (608) 283-1788
lkobza@boardmanlawfirm.com

MEMORANDUM

TO: Groundwater Advisory Committee

FROM: Lawrie J. Kobza

DATE: October 30, 2007

RE: Recommendation on Deferring Revisions to §281.34, Stats., Until a Comprehensive State Water Supply Policy is Developed

RECOMMENDATION:

The Groundwater Advisory Committee recommends that any changes in §281.34, Stats., be deferred until the State develops a comprehensive water supply policy. After the State develops a comprehensive water supply policy, revisions to §281.34, Stats., should be implemented in a manner consistent with that policy.

RATIONALE:

Numerous discussions are taking place about what water can be used for, how it can be used, and who can use it. These discussions are taking place in this Groundwater Advisory Committee; among legislators, regulators and interested parties regarding the Great Lakes Compact; among parties including the DNR and Public Service Commission regarding water conservation; and among DNR staff and community water systems regarding well construction requirements. The problem is that these discussions are taking place among separate groups, on separate dates, and in separate rooms. There is little coordination between these discussions, and there has been no discussion about how the various pieces of water supply legislation or regulation should fit together. Until the State develops a consistent water supply policy, there should be no further changes to existing law.

Discussions regarding §281.34, Stats., have focused on whether there should be more restrictions on the placement of high capacity wells to ensure that certain high quality surface water and springs are protected. In these discussions there seems to be an assumption that a well could almost always be placed somewhere or constructed in some manner to protect the surface water or spring. There is little discussion about what happens if it would be impossible for a landowner to construct a viable well without having an environmental impact - and what the end result should be in that case. Should the protection of the surface water or spring always take

precedence over the proposed well and its related use, or should there be situations where the installation of the well is allowed despite the environmental impact?

The provisions of the proposed Great Lakes Compact directly affect this issue in several ways. First, the Great Lakes Compact contains withdrawal standards for the withdrawal of surface water or groundwater from the Great Lakes basin. These standards would apply to new high capacity wells within the basin. It makes little sense for the State to adopt conflicting or overlapping requirements for high capacity wells within the basin by revising § 281.34, Stats., now while the Great Lakes Compact is still under consideration.

Second, the Great Lakes Compact would prohibit most Wisconsin communities located outside the basin from using Lake Michigan surface water for its water supply - even if the water used was returned to the basin. This prohibition would mean that those communities' only source of water supply would be the groundwater. Since water withdrawn from the groundwater cannot be readily returned to the groundwater, these community water supply wells could have a negative impact on nearby streams, lakes, springs, and wetlands. However, for the State to eliminate surface water as a viable water supply option, and at the same time to impose further restrictions on a community's ability to install a high capacity well, would seem to be contradictory - unless the State's goal is to stifle the growth of these communities.

The community well construction requirements in Wisconsin Administrative Code NR 811, which are being considered for revision, also affect this issue. NR 811.16 sets forth separation distances for new municipal wells from potential contamination sources. These separation distances - especially when combined with the provisions of the Great Lakes Compact and the groundwater quantity law - limit where new municipal wells may be located. The principle behind these limits is that it is wise to avoid potential contamination sources when putting in a municipal well so that water quality problems are averted in the future. While this makes sense, what happens when a proposed well cannot avoid both contamination sources and protected waters? The conflict is likely to get even worse in the future.

Given the number of water supply issues currently being discussed in Wisconsin, the State should step back and develop a comprehensive water supply policy that reflects the State's priorities and that takes into account the different interests and uses of our State's waters. Decisions regarding groundwater quantity management and high capacity well construction should not be made on a piecemeal basis. Rather they need to fit into an overall policy that makes sense and that can serve Wisconsin's future.